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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: The Mangi Environmental Group, Inc.

File: B-294597

Date: November 29, 2004

James I. Mangi for the protester.

Samar A. Shams, Esq., Department of Agriculture, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected protester's quotation for environmental assessment where solicitation required a fixed price for completion of the tasks specified, but protester submitted its quotation on a fixed-price, level-of-effort basis, permitting it to accept a lower degree of risk than required by the solicitation and accepted by the other vendors.

DECISION

The Mangi Environmental Group, Inc. protests the rejection of its quotation, and the subsequent issuance of a purchase order to The Shipley Group, under request for quotations (RFQ) No. FSA-R-33-04DC, issued by the Department of Agriculture, Farm Service Agency (FSA), for a programmatic environmental assessment (PEA) for the Confederate Tribes and Bands of the Yakama Nation Conservation Reserve Enhancement Program. Mangi argues that the agency improperly rejected its quotation.

We deny the protest.

The RFQ, posted on the General Services Administration's (GSA) E-Buy website on August 12, 2004, included a statement of work (SOW) that listed six tasks/deliverables, including: (1) develop and submit a management plan, (2) conduct scoping, (3) acquire data, analyze impacts and prepare preliminary draft PEA, (4) consult with FSA and Yakama Nation, (5) consult further, obtain and respond to public comments, refine draft PEA, and (6) prepare and submit final PEA. RFQ at 3. On August 13, the agency posted an amendment specifying that vendors

were to submit pricing proposals that provide “a firm fixed price for completing all tasks listed in the [SOW]” RFQ Modification 1, at 1.

FSA received four quotes, including Mangi’s and Shipley’s, by the August 16 closing date. Mangi’s quote of \$19,647 was low, but Mangi quoted on a fixed-price, level-of-effort basis. Shipley submitted a fixed-price quote of \$26,884. Because Mangi’s fixed price was based on a level-of-effort, the agency determined that it was unacceptable. On August 17, the agency issued a purchase order to Shipley as the vendor submitting the low-priced, acceptable quotation.

Mangi maintains that its fixed-price, level-of-effort quote is acceptable because Federal Acquisition Regulation (FAR) § 16.207 designates a level-of-effort contract form as a type of fixed-price contract.

It is fundamental that an agency may not solicit quotes on one basis and then make award on a materially different basis when other vendors would be prejudiced by such an award. Cellular One, B-250854, Feb. 23, 1993, 93-1 CPD ¶ 169 at 4. In this same vein, where a vendor’s quote contains an irregularity that would provide a benefit to that vendor not extended to all vendors by the RFQ, and which is prejudicial to other vendors, the quote is unacceptable. See Valix Fed. Partnership I, B-250686, Feb. 1, 1993, 93-1 CPD ¶ 84 at 4.

While Mangi is correct that a fixed-price, level-of-effort contract is a form of fixed-price contract, the RFQ did not provide for award on a level-of-effort basis, and Mangi’s quoting on this basis provided it a benefit not available to vendors that quoted fixed prices.¹ As noted, the RFQ specified six tasks/deliverables that the contractor would be required to complete for the quoted fixed price, without regard for the level of effort that ultimately proved necessary to complete them. Mangi’s quote did not provide a price for completing the contract tasks, as called for, but instead priced a level of effort (undefined in the quotation), which would be the extent of Mangi’s contractual obligation, whether or not it proved sufficient to complete the contract tasks. In effect, Mangi’s quote was based on the agency’s accepting the risk that Mangi’s level of effort would not be sufficient to complete the contract tasks, while Shipley’s and the other vendors’ quotes were based on the contractor’s accepting that risk, as contemplated by the RFQ. This lower degree of

¹ Under a fixed-price contract, the price is not subject to any adjustments on the basis of the contract’s cost experience in performing the required work. Under this contracting method, maximum risk and full responsibility for all costs and resulting profit and loss associated with performing the required work rest with the contractor. See FAR §§ 16.202-1, 16.202-2. In contrast, under a fixed-price, level-of-effort contract, the government pays a fixed price for, and the contractor is obligated to provide, only a specified level of effort, identified and agreed upon in advance, over a specified time. See FAR § 16.207-3.

accepted risk provided Mangi with an advantage over other vendors; the other vendors therefore were prejudiced. Accordingly, the agency properly rejected Mangi's quotation as unacceptable.

Citing the alleged absence of detailed specifications and FAR § 16.207-2, which provides that a fixed-price, level-of-effort contract is suitable for an investigation or study in a specific research and development effort, Mangi argues that a level-of-effort contract should have been used for the environmental assessment required here. Our Bid Protest Regulations provide that protests of alleged deficiencies apparent on the face of a solicitation must be filed no later than the closing time for receipt of proposals, or quotations. 4 C.F.R. § 21.2(a)(1) (2004). Since it was, or should have been, clear to Mangi that the RFQ was not requesting fixed prices on a level-of-effort basis, if Mangi believed prices should have been solicited on that basis, it was required to protest on this basis prior to the closing time. Since this argument was not raised until after that time, it is untimely and will not be considered.

The protest is denied.

Anthony H. Gamboa
General Counsel